UNITED NATIONS

TD

United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/COM.1/33
TD/B/COM.1/EM.13/3
7 December 2000

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods
and Services, and Commodities
Fifth session
Geneva, 19 - 23 February 2001

REPORT OF THE EXPERT MEETING ON SYSTEMS AND NATIONAL EXPERIENCES FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

Held at the Palais des Nations, Geneva
30 October – 1 November 2000

CONTENTS

Chapter		Page
I.	Outcome of the Expert Meeting	2
II.	Organizational matters	9
Annex		
	Attendance	11

GE. *0000053320*

ENG

I. OUTCOME OF THE EXPERT MEETING

1. The Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices was held in Geneva from 30 October to 1 November 2000. The following is the outcome of the Expert Meeting. In accordance with the decision taken by the Trade and Development Board at its twenty-fourth executive session, the outcome will be circulated by the secretariat to member States with a request for policy comments on the recommendations of experts. The responses of member States will be taken into account in the preparation of secretariat documentation for the fifth session of the Commission on Trade in Good and Services, and Commodities, to be held from 26 February to 2 March 2001.

2. Individual experts put forward views and policy options for Governments to consider in protecting traditional knowledge, innovations and practices (TK). The following text reflects the diversity of the views expressed and summarizes the experts' conclusions and recommendations.

A. The role of traditional knowledge

3. The role of TK in several economic sectors was emphasized by many experts. It was indicated that TK has intrinsic value, which goes beyond its economic value to cultural, linguistic, spiritual, ecological and other spheres. The loss of cultural diversity and biodiversity, particularly the languages spoken and applied uses of biodiversity by local and indigenous communities (LICs), is a contributing factor in the loss of TK. It was emphasized that preserving cultural diversity and local systems of self-management would protect TK. The protection of TK requires an entire spectrum of action, which may include, but is not limited to, the application of intellectual property rights (IPRs), and such action should include support to societies that are the custodians and developers of these knowledge systems.

4. The most important objectives of regulating access to TK are: generating income for LICs, building the capacity of and developing value-added activities in LICs, and respecting and preserving cultural diversity. New technologies increase the economic value of biodiversity, expanding the potential for commercialization of any given sample. On the negative side, they also make it easier to misappropriate TK.

5. TK can help increase efficiency because it is cost-effective and uses appropriate technology, effectiveness because it is locally managed and reaches the poor, and sustainability because it provides for mutual adaptation and learning and empowers local communities.

6. It was suggested that a pluralistic legal approach to the protection of TK, which would accommodate the interests of LICs, should be promoted. There should be an exchange of

national experiences among countries where progress has been made in respecting customary law in national legislation.

7. Action should be taken closer to the communities themselves, and their territory and structure should be taken as a basis for such action, which would require finding more human and inclusive models, with a strong focus on women as the main carriers and preservers of TK and biodiversity and the key to household food security, as well as on children to support the inter-generational transmission of TK.

8. Approaches to the protection and use of TK seem to be different in Latin America, Asia and Africa. This calls for regional capacity-building activities and policy dialogues.

B. Role of traditional knowledge in sectors

Traditional medicine

9. Large parts of the population in developing countries depend on traditional medicine and treatment for survival. In developed countries, there is a rebound of interest in alternative treatment methods, including traditional medicine.

10. Possibilities of interaction between traditional and modern medicine should be carefully studied, and there is a need for more research on the effective use of traditional medicine, in particular with universities, polyclinics and hospitals. Traditional medicine and treatment often offer many unexplored opportunities.

11. The importance of proper protection of traditional medicine was expressed. Traditional medicinal care must be affordable to the poor, and any form of intellectual property protection should not interfere with customary practices in providing traditional medicines and health care. Article 27.3(a) of the TRIPS Agreement permits countries to exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of humans or animals. It was also considered necessary to provide adequate protection for TK to prevent misappropriation and assure equitable sharing of benefits, preferably based on an international system of recognition of TK.

Traditional agriculture

12. Traditional agriculture plays an important role in food security, resource management, and environmental and bio-diversity preservation.

13. TK communities need to ensure that their innovations systems are supported and rewarded and that they are not locked out of the research agenda by major companies and countries. Agricultural extension services and the direction of R&D in developing countries should take account of TK, and other social and economic policies should support and enable

TK, innovations and practices to flourish as a necessary requirement for other aspects of protection, using either existing IPRs or *sui generis* systems, to be meaningful.

Handicraft and folklore

14. The importance of traditional handicraft and folklore lies not only in their economic and aesthetic functions, but also in the fact that they often use materials from renewable resources and are more friendly to the environment.

15. Experts underlined the need to raise awareness among the creators of traditional folk culture of their rights in the area of intellectual property; support archiving of traditional folk culture and folklore collections and databases; encourage efforts to protect such collections and databases against misappropriation; and encourage educational institutions to introduce classes in traditional folk culture.

C. Systems for the protection of traditional knowledge

16. Customary law, IPRs, common law concepts, legal agreements or contractual arrangements and *sui generis* systems are important to trade in TK goods and TK-led development. The first step is to define the issue clearly in order to establish to what extent the use or adaptation of existing regulatory regimes or legal instruments will meet needs. The work undertaken by WIPO and the Intergovernmental Committee established earlier this year should contribute to this process. Customary law systems should be strengthened and recognized.

17. It would seem preferable to have a system of protection of TK that is consistent with other forms of IPRs. IPR-related measures can protect biodiversity and related TK. But in some cases, IPRs may not be effective in protecting TK. Several proposals were made to link IPRs and TK, e.g. through certificates of origin or disclosure clauses in patent applications and, as in the Andean Decision 406, by linking the approval of TK-based patents to the presentation of a contract for licensing.

18. Information was also provided and views expressed to the effect that IPRs are a broad and dynamic concept that is not limited to the known and existing categories of IPRs. As in the past, the system can evolve to meet new needs, including several of those expressed by TK holders.

19. "Bridging" the collective rights applicable to TK with the IPR regime in devising a system for access to and sharing of the benefits of genetic or bio-chemical resources is a formidable task and, at the same time, the most promising avenue. There is a need to explore an international framework for collective rights within the universe of IPRs, possibly including in WIPO, WTO and CBD. In this connection, it is important to bear in mind that indigenous peoples exist in a "universe" which differs from that of IPRs.

20. TK holders and others expressed the view that the current IPR system is inappropriate for the recognition and protection of TK systems because of the inherent conflict between these two systems. According to this view, the patenting of life forms should be banned because it attacks the values and the livelihoods of LICs. All forms of bio-piracy should be eliminated, and WIPO and other relevant organizations should work towards this objective.

21. The protection of biodiversity depends on the protection of TK that goes with it. A number of countries have gained interesting experience with legislative, IPR and non-IPR measures, e.g. the Andean Community, Costa Rica, Brazil, India, Nigeria, Panama, Thailand and the Philippines. There are practical problems for the effective application and implementation of legal frameworks for TK protection. Some countries have IPR-related regulation that requires disclosure of the source of information.

22. TK holders expressed concern that one type of IPR system, e.g. patents, is being universalized and prioritized to the exclusion of all others, including their counterpart customary systems. Concern was also expressed that the patent system can also lead to misappropriation of TK.

23. There are also policy measures and non-legal instruments that can offer some degree of protection. These might include codes of conduct for researchers and commercial entities or grassroots initiatives such as community-controlled databases.

24. The rights of TK holders may be acknowledged in different terms: up-front payments, royalties, fees for material services, involvement of local researchers and communities in R&D, milestone payments etc. The associated procedures may also be quite diverse, e.g. certificates of origin, trademarks, copyrights, geographical indicators, contracts, permits, know-how licenses, material transfer agreements (for *ex situ* collection), and public register confidentiality. A possible role for the Global Bio-Collecting Society in monitoring access to TK could be explored.

D. *Sui generis* systems for the protection of TK

25. Several elements constituting a *sui generis* system for the protection of TK were discussed and a number of common elements emerged from the discussion, which are included in the recommendations for action at the national level (paragraph 34). A view was expressed that the protection of TK should influence national policies in areas such as agriculture, forestry and investment. Many countries have made advances on *sui generis* legislation for protecting TK. These systems should be developed in close consultation with TK holders and should include prior informed consent by the LICs as an intrinsic element of their legislative frameworks. Several model laws have also been developed, including those of the Organization of African Unity and the Third World Network.

26. National *sui generis* systems by themselves would not be adequate to protect TK. Exclusion from patentability of TK-based products in one country, for instance, would not

prevent other countries from granting patents. A need was therefore expressed for an international mechanism for protecting TK. In this context, minimum standards for an international *sui generis* system for protecting TK could be devised.

E. Harnessing TK for development and trade

27. The top-down approach prevailing in development policies has been dominated by the idea of national Governments and intergovernmental organizations providing LICs with what they lacked, e.g. funding, training and employment. TK is one area where there is a need to cultivate a bottom-up approach to development, building upon the resources and strengths of LICs, their experiences and creativity.

28. There is a need to explore the potential of information and communication technologies for the transmission of TK, e.g. through virtual markets, community multi-media centers and culturally specific education activities. The key role of development partners is to empower communities to use global *and* local knowledge. However, empowerment alone is not sufficient. Capacity building should support it. Experts identified a number of areas on which capacity-building efforts should focus: institutional consolidation of LICs; promoting intercultural exchange of experience; facilitating policy dialogue; awareness-raising on the importance of TK and cultural impact assessment; documentation of traditional knowledge; converting TK into economically viable products and services; and commercializing TK-based products and services.

29. Whereas commercialization of TK-based products and services provides a powerful incentive to communities to retain the TK base, extreme care needs to be taken to ensure that the resource base of LICs is not over-exploited or permanently destroyed. Making the commercialization of TK sustainable takes a number of measures at several levels: (*in situ*) conservation; generating awareness about the importance of sustainable resource use; monitoring resource use; changing policy for TK collection with the consent and participation of local communities; training in sustainable harvesting; and assisting in simple first and second degree processing of TK-based products to add value. The current IPR regime does not create a level legal field for LICs. It is all the more important to assess the risks of over-exploitation and consequent loss of TK associated with commercialization.

30. TK holders pointed out that too much emphasis is put on the commercialization of TK, rather than on its conservation and further development. It is necessary to protect the underlying values of TK.

31. Targeting local communities as beneficiaries may trigger conflicts between those of them that have overlapping resource bases or TK. The idea of a community knowledge fund as a recipient of benefits derived from commercialization of TK-based products deserves special attention. However, overheads associated with such funds should be kept to a minimum.

32. The share of benefits accruing to LICs from the commercial use of TK should be proportionate to the volume of trade in TK-based products and services.

F. Recommendations at the national level

33. There is a continued need for raising awareness of the role and value of TK among LICs, policy makers and other stakeholders. LICs, particularly women, should be fully involved in the development of policies aimed at protecting TK.

34. Apart from using suitable modern IPR instruments for appropriate cases, a national *sui generis* system for the protection of TK may be useful. Such a *sui generis* system could include the following common elements: collectively held TK rights; registers of knowledge; clear systems of access to such rights and benefit-sharing; clarification of land resource rights as part of the holding of TK rights; wide participation and consultation; and creation of effective incentives for research. In addition, TK protection needs to be reflected in other national policy areas, such as agriculture, forestry, investment and finance.

35. There is a need to carry out training and consultation programmes among LICs, especially on the application of customary law.

36. National representatives should try to have the meeting's outcome translated into national or local languages and distributed to LICs.

G. Recommendations at the multilateral level

37. A number of institutions are carrying out work programmes on TK. There should be continued coordination and cooperation between the intergovernmental organizations concerned. An impartial working group could be created to coordinate these efforts. In addition to other fora, TK protection should also be discussed in the WTO.

38. The regional diversity reflected in the debate call for a regional approach to exploring possibilities for the protection of TK and the commercialization of TK-based products.

39. Indigenous groups at the Meeting called for the establishment of an Indigenous Peoples Working Group for Protecting TK of the LICs. It was also noted that there should be no duplication with existing work and processes in other international fora, including CBD and the Economic and Social Council.

40. National *sui generis* systems by themselves will not be sufficient to protect TK adequately. There is therefore a need to explore an international mechanism that might explore minimum standards of an international *sui generis* system for TK protection. Any international discussions should take due account of practical experiences gained in TK-related issues at the national and regional level. LICs should be involved in building an

international framework for collective rights. Capacity-building targeting women as primary TK holders is an essential component of such activities.

H. Recommendations to UNCTAD

41. UNCTAD, within its mandate as expressed in the Bangkok Plan of Action (TD/386), subject to available resources, and in cooperation and avoiding overlap with other relevant international and regional organizations, should:

- Organize workshops and seminars at the regional and national levels and encourage the involvement of indigenous and local communities;
- Contribute to the ongoing processes in WIPO, WTO, CBD, UNCCD and other organizations;
- Promote the design and implementation of comprehensive national strategies to harness TK for development and trade;
- Strengthen capacity-building programmes on TK, including within the framework of the BIOTRADE Initiative, the UNEP-UNCTAD Capacity Building Task Force (CBTF) on Trade, Environment and Development and ongoing and planned UNDP/UNCTAD projects;
- Further develop the training module on Traditional Knowledge, Trade and Development;
- Assist interested developing countries in exploring *sui generis* systems for the protection of TK, including possible multilateral aspects of such systems;
- Review practical difficulties in developing and implementing effective legal frameworks for the protection of TK;
- Assist in the formation of databases on TK at national and international levels to disseminate information and ensure consistency among different organizations;
- Publish, including on the Internet, the papers submitted to this workshop and circulate the monograph among its member countries and NGOs representing LICs.

II. ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

42. At the consultations of the President of the Trade and Development Board with the Bureau, coordinators and interested delegations on 31 March 2000, member States decided to convene an Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices. The decision was made in accordance with the UNCTAD X Plan of Action (TD/386).

B. Election of officers
(Agenda item 1)

43. At its opening meeting, the Expert Meeting elected the following officers to serve on its Bureau:

Chairperson:	Mr. Ronald Saborio Soto (Costa Rica)
Vice-Chairperson-cum-Rapporteur:	Mr. Sivaramen Palayathan (Mauritius)

C. Adoption of the agenda
(Agenda item 2)

44. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in TD/B/COM.1/EM.13/1. Accordingly, the agenda of the Meeting was as follows:

1. Election of officers
2. Adoption of the agenda and organizational work
3. Systems and national experiences for protecting traditional knowledge, innovations and practices
4. Adoption of the outcome of the Meeting

D. Documentation

45. For its consideration of the substantive agenda item (items 3), the Expert Meeting had before it a background note by the UNCTAD secretariat entitled "Systems and national experiences for protecting traditional knowledge, innovations and practices " (TD/B/COM.1/EM.13/2).

E. Adoption of the outcome of the Meeting
(Agenda item 4)

46. At its closing meeting, on 1 November 2000, the Expert Meeting approved the outcome of the Meeting reproduced in section I above.

Annex

ATTENDANCE *

1. The following States members of UNCTAD were represented at the Meeting:

Albania
Argentina
Australia
Austria
Bangladesh
Benin
Bolivia
Brazil
Bulgaria
Burkina Faso
Burundi
Canada
China
Colombia
Comoros
Costa Rica
Côte d'Ivoire
Cuba
Czech Republic
Denmark
Dominican Republic
Egypt
El Salvador
Ethiopia
Finland
France
Gambia
Georgia
Germany
Guinea
Haiti
Holy See
India
Iraq
Italy
Japan
Kazakhstan
Kenya
Latvia
Madagascar
Malaysia
Mauritius
Mexico
Morocco
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Palau
Panama
Paraguay
Peru
Philippines
Romania
Rwanda
Sierra Leone
Solomon Islands
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Thailand

* For the list of participants, see TD/B/COM.1/EM.13/INF.1.

Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Venezuela
Viet Nam
Yemen
Zimbabwe

2. The following intergovernmental organizations were represented at the Meeting:

Andean Community
Commonwealth Secretariat
European Community
International Union for the Protection of New Varieties of Plants[1]
Organization of African Unity
Organization of the Islamic Conference
South Centre

3. The following specialized agencies and related organization were represented at the Meeting:

International Labour Organization
Food and Agriculture Organization of the United Nations
United Nations Ecucational, Scientific and Cultural Organization
World Health Organization
World Bank
World Intellectual Property Organization
United Nations Industrial Development Organization
World Trade Organization

4. The United Nations Environment Programme, the United Nations Convention to Combat Desertification and the Office of the High Commissioner for Human Rights were represented at this Meeting. The International Trade Centre UNCTAD/WTO was also represented at this Meeting.

5. The following non-governmental organizations were represented at the session:

General Category

Action Aid
Engineers of the World
European Chemical Industry Council

[1] Non-status.

International Centre for Trade and Sustainable Development
International Chamber of Commerce
International Peace Research Association
World Association of Small and Medium Enterprises
World Federation of United Nations Associations
World Vision International
World Wide Fund for Nature International

Special Category

International Union for Conservation of Nature and Natural Resources

Non Status

Coordinadora de las Organizaciones Indigenas de la Cuenca Amazónica
Genetic Resources Action International
Ilkerin Loita Maasai
Indigenous Peoples Biodiversity Network
International Indian Treaty Council
Women's World Summit Foundation

6. The following institutions attended the Meeting;

The Aboriginal and Torres Straits Islander Commission
Amazonian Parliament, Venezuela
Centre de Documentation de Recherche et d'Information des Peuples Autochtones, Switzerland
Foundation for International Environment Law and Development, United Kingdom
International Environmental Law Research Centre, Geneva
International Working Group on Indigenous Affairs
Kew Royal Botanical Gardens, United Kingdom
Natural History Museum, London
Rockefeller Foundation, United States of America
University of Basel
University of Chicago
University of Lausanne
University of Oxford
University of Paris

7. The following special invitees attended the Meeting:

Mr. Jorge Cabrera Madaglia
Mr. Graham Dutfield
Mr. Le Quy An

Mr. Le Quy An
Mr. Suman Sahai
Mr. Maui Solomon
Mr. Henri Philippe Sambuc, Advocat, Switzerland
Ms. Gehl Sampath, University of Hamburg
Mr. Geoffrey Tansey
Mr. Martin Shenton, University of Zürich